

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

ONYX WASTE SERVICES, INC.

Employer/Petitioner

and

Case 33-UC-168

TEAMSTERS LOCAL UNION NO. 325,
affiliated with the INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Union¹

REGIONAL DIRECTOR'S DECISION AND ORDER

The Employer, Onyx Waste Services, Inc., is engaged in the collection, transportation, and disposal of solid waste. The Union, Teamsters Local Union No. 325, affiliated with the International Brotherhood of Teamsters, AFL-CIO, represents all CDL drivers, mechanics, laborers, and scale operator employed by the Employer at its two facilities located in Davis Junction, Illinois, but excluding office clerical and supervisory employees. The Employer filed a unit clarification petition with the National Labor Relations Board under Section 9(b) of the National Labor Relations Act seeking to clarify the existing unit to exclude the scale operator. A hearing officer of the Board held a hearing and the parties filed briefs with me.

At hearing, the Employer contended that the scale operator should be excluded from the unit because her duties are of a "management nature" and she lacks a community of interest with the other unit employees. In its brief, the Employer apparently abandons the managerial argument and, instead, argues that the scale operator does not share a community of interest with the other unit employees, her duties are clerical in nature and she should be excluded as an office clerical employee. Contrary to the Employer, the Union contends that clarification of the unit is not appropriate because the scale operator is not a managerial employee; she has

¹ The Union's name appears as amended at hearing.

historically been included in the unit, and she shares a community of interest with the unit employees.

I have considered the evidence and arguments presented by the parties. As discussed below, I have concluded that the unit should not be clarified and have dismissed the petition. The Employer has presented no evidence that the scale operator's duties are managerial or that those duties have undergone any recent substantial changes. As the position has been included in the unit since August 2000, without substantial change, clarification of the unit is not warranted.

I. FACTS

The Employer's operations at issue here are the result of two purchases. On April 1, 2000, the Employer purchased the Orchard Hills landfill located in Davis Junction, Illinois and certain refuse collection and hauling operations in the Rockford, Illinois area. On June 1, 2001, the Employer purchased additional routes and trucks in the Rockford area as well as the office building, maintenance garage, truck parking, and property located at the former Ogle County landfill, also located in Davis Junction, Illinois. These two properties abut. The entrances are approximately one mile apart and are connected by a service road. With the exception of the scale operator, all of the unit employees are domiciled at the former Ogle County landfill site. The scale operator works at the scale house at the Orchard Hills landfill. The scale operator is in daily contact with the Employer's drivers as the waste collected by the drivers is disposed of at the Orchard Hills landfill.

The Union represented many of the unit employees prior to the Employer's purchases. After the first purchase, the Employer assumed the contract between the Union and the Employer's predecessor, which was effective from October 1, 1998 through September 30, 2001. This contract did not specifically include the scale operator. On August 28, 2000, the Employer and the Union executed an addendum to the contract including the scale operator in the unit. This addendum was a result of discussions between the parties and the resolution of a

number of grievances and issues. The parties subsequently negotiated two successor agreements specifically including the scale operator in the recognized unit. The first agreement was effective from October 1, 2001 through January 31, 2004. The current agreement is effective from February 1, 2004 through January 31, 2007. During the negotiations for the current agreement, the Employer specifically reserved the right to file the instant petition seeking to exclude the scale operator.

The scale operator works in the scale house, which is the primary point of entry for the Employer's drivers and customers seeking to utilize the landfill. The scale operator greets all traffic, records the vehicle weights, inspects the loads for prohibited materials, receives and completes paperwork on the loads, and enters data into the computerized tracking/billing system, creating a "ticket" for each load which is utilized in the billing process. The scale operator cannot edit the ticket if she makes a mistake entering the data, as she does not have the requisite access to the computer system. The scale operator has the authority to reject loads if they contain any prohibited materials. A list of prohibited materials is supplied by management, and the scale operator has no authority to vary from this list. The scale operator also directs the drivers where to dump the trash in the landfill. This information is disseminated orally and by a sign in the window prepared by the scale operator. The operations manager or site operator informs the scale operator where to direct the drivers; she has no input in the decision-making process. The scale operator's duties and responsibilities have remained essentially unchanged since 2000. The only changes cited are that the scale operator enters information into a more sophisticated computerized tracking/billing system and that she generally requires less direct supervision as she has gained experience and training on the job.² Even the Employer's regional manager characterized these changes as "slight variations."

² The record does not reflect when these changes occurred.

II. ANALYSIS

Unit clarification is appropriate for resolving ambiguities concerning the unit placement of newly created job classifications or of existing classifications that have undergone recent, substantial changes in duties and responsibilities so as to create a real doubt as to the appropriate unit placement of that classification. *Union Electric Co.*, 217 NLRB 666, 667 (1975). Although clarification is generally not appropriate for upsetting an agreement of a union and an employer concerning the unit placement of various individuals, in limited situations, the Board will exclude positions that have historically been included without any change in duties and responsibilities, if it can be shown that the persons in such positions meet the test for establishing supervisory, managerial, or confidential status, as continued inclusion of these positions would violate the principles of the Act. *The Washington Post Company*, 254 NLRB 168, 169 (1981).

The Employer has not specifically contended that the scale operator is a supervisor or a confidential employee. At hearing, the Employer initially contended that the scale operator's duties are of a "management nature" because she weighs trucks to determine the weight of the waste for billing purposes and she has final authority to determine whether or not waste is accepted at the landfill. The burden of proving managerial status lies with the party asserting such status exists. *Allstate Insurance Co.*, 332 NLRB 759, 759 fn. 2 (2000). Managerial employees are those who formulate and effectuate management policies by expressing and making operative the decisions of their employer and those who have discretion in the performance of their jobs independent of their employer's established policy. *NLRB v. Yeshiva University*, 444 U.S. 672, 682 (1980). The duties cited by the Employer as managerial are clearly not. The trucks drive onto a scale, the scale operator simply enters the pertinent information into the computerized tracking/billing system. The remainder of the billing process is handled by others. The scale operator accepts or rejects waste pursuant to a list of prohibited materials supplied to her by the Employer. She is not involved in the formulation of the list and

she utilizes no discretion or independent judgment in either process. This evidence is far from adequate to establish managerial status and even the Employer implicitly acknowledges this, as evidenced by its failure to even address this argument in its brief.

As the evidence fails to establish any statutory or policy basis for exclusion, the requested unit clarification would only be appropriate if the scale operator position was newly established or had undergone recent substantial changes. The evidence at hearing clearly establishes that neither condition is met. In its brief, the Employer argues that the scale operator position is clerical in nature and does not share a community of interest with the other unit employees. Even if true, this argument does not raise a valid basis for unit clarification as the Employer must first show a substantial change creating a unit placement ambiguity before these factors can be considered. *Union Electric Co.*, supra. Accordingly, I find no valid issue has been raised concerning the unit placement of the scale operator that is appropriate for resolution in a unit clarification proceeding. *Bethlehem Steel Corp.*, 329 NLRB 243 (1999).

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union is a labor organization within the meaning of the Act.
4. The Employer proposes to clarify the currently recognized bargaining unit so as to exclude the scale operator.
5. Clarification of the bargaining unit is not warranted.

IV. ORDER

The petition filed in this matter is dismissed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **August 26, 2004**. The request may not be filed by facsimile.

Dated: August 12, 2004
at: St. Louis, Missouri

/s/ Donald E. Gardiner
Donald E. Gardiner, Acting Regional Director
National Labor Relations Board, Region 14
and Subregion 33